

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

---

In re: Case No. 17-33288  
Backup Power Source, Inc., Chapter 7  
Debtor.

---

Erik A. Ahlgren, Trustee, Adv. P. No. 18-03016  
Plaintiff,  
v.  
Northern Tool & Equipment Company, Inc.  
Defendant.

---

**ANSWER TO PLAINTIFF'S COMPLAINT**

---

Defendant, Northern Tool & Equipment Company, Inc. ("NTE"), by counsel, states its Answer to Plaintiff's Complaint ("Complaint") as follows:

1. NTE admits the allegations set forth in paragraph 1 of the Complaint.
2. NTE admits the allegations set forth in paragraph 2 of the Complaint.
3. In response to paragraph 3 of the Complaint, NTE admits that Plaintiff seeks relief under the authorities cited therein but denies that Plaintiff is entitled to any relief in this action.
4. In response to paragraph 4 of the Complaint, NTE states that the court lacks personal jurisdiction over NTE, because Plaintiff's service of process was insufficient. Plaintiff did not serve the Summons and Complaint upon an officer or managing agent as required by Fed. R. Bankr. P. 7004(b)(3). Therefore, NTE denies the allegations set forth in paragraph 4 of the Complaint.

5. NTE admits the allegations set forth in paragraph 5 of the Complaint.

6. NTE admits the allegations set forth in paragraph 6 of the Complaint.

7. Paragraph 7 of the Complaint asserts a legal conclusion as to which no response is required. To the extent a response is required, the allegations are denied.

8. As to paragraph 8 of the Complaint, NTE admits that it did not pay the invoice but states that no amount was due on the invoice due to credits owed by Debtor to NTE that exceed the amount of the invoice. Prior to February 2016, NTE ordered goods from the Debtor and paid for those goods in the amount of \$9,943.15. Those goods were delivered damaged in February 2016, so the damaged goods were returned to the Debtor, resulting in a credit owed by Debtor to NTE in the amount of \$9,943.15. Also in 2016, NTE received another credit from the Debtor in the amount of \$247.62 from Debtor's marketing coop program. As a result, the Debtor owed NTE \$10,190.77. After applying this credit to the invoice attached as Exhibit A to the Complaint, the Debtor still owes \$1,936.77 to NTE. NTE does not owe anything to Debtor or the estate.

9. NTE denies the allegations set forth in paragraph 9 of the Complaint. NTE also refers to the immediately preceding paragraph.

10. In response to paragraph 10 of the Complaint, NTE states that no answer is necessary as there are no substantive allegations contained within paragraph 10. To the extent that paragraph 10 may be construed to contain any allegations against NTE, those allegations are denied.

11. In response to paragraph 11 of the Complaint, NTE states that no answer is necessary as there are no substantive allegations contained within paragraph 11. To the extent

that paragraph 11 may be construed to contain any allegations against NTE, those allegations are denied.

12. NTE is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint, and therefore denies the same.

13. Paragraph 13 of the Complaint asserts a legal conclusion as to which no response is required. To the extent a response is required, the allegations are denied.

14. NTE denies the allegations set forth in paragraph 14 of the Complaint.

#### **AFFIRMATIVE DEFENSES**

1. Plaintiff's Complaint fails to state a claim against NTE upon which relief can be granted.

2. Service of process was insufficient. Plaintiff did not serve the Summons and Complaint upon an officer or managing agent as required by Fed. R. Bankr. P. 7004(b)(3).

3. Defendant's Counterclaim is subject to setoff and/or recoupment.

4. NTE does not owe anything to Debtor. Prior to February 2016, NTE ordered goods from the Debtor and paid for those goods in the amount of \$9,943.15. Those goods were delivered damaged in February 2016, so the damaged goods were returned to the Debtor, resulting in a credit owed by Debtor to NTE in the amount of \$9,943.15. Also in 2016, NTE received another credit from the Debtor in the amount of \$247.62 from Debtor's marketing coop program. As a result, the Debtor owed NTE \$10,190.77. After applying this credit to the invoice attached as Exhibit A to the Complaint, the Debtor still owes \$1,936.77 to NTE.

5. Plaintiff's claims are barred by the doctrine of laches.

6. Plaintiff's claims are barred by the doctrine of equitable estoppel.

7. Plaintiff's claims are barred by the doctrine of waiver.

8. As an alternative defense to the Complaint, NTE alleges that the claims contained in the Complaint may be barred by any or all of the affirmative defenses contemplated by Rule 8 of the Federal Rules of Civil Procedure and Bankruptcy Rule 7008. The extent to which Plaintiff's claims may be barred by one or more of such affirmative defenses not specifically set forth above cannot be determined until NTE has the opportunity to conduct discovery, and therefore, NTE incorporates all such affirmative defenses as if fully set forth herein.

9. NTE reserves its right to supplement and/or amend these affirmative defenses, as investigation and discovery are ongoing.

WHEREFORE, NTE respectfully requests that this Court enter an order that dismisses the Complaint and that grants NTE such other and further relief as is just and proper under the circumstances.

Dated: May 18, 2018

FAFINSKI MARK & JOHNSON, P.A.

By /e/ Lorie A. Klein  
Lorie A. Klein (#0311790)  
Flagship Corporate Center  
775 Prairie Center Drive, Suite 400  
Eden Prairie, MN 55344  
Telephone: (952) 995-9500  
lorie.klein@fmjlaw.com

Attorneys for Northern Tool &  
Equipment Company, Inc.

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

---

In re: Case No. 17-33288  
Backup Power Source, Inc., Chapter 7  
Debtor.

---

Erik A. Ahlgren, Trustee, Adv. P. No. 18-03016  
Plaintiff,  
v.  
Northern Tool & Equipment Company, Inc.  
Defendant.

---

**CERTIFICATE OF SERVICE**

---

I, Lorie A. Klein, declare under penalty of perjury that on May 18, 2018 I served the following:

**Answer to Plaintiff's Complaint**

electronically with the Clerk of Court through ECF, and that the above documents will be delivered by automatic e-mail notification to all ECF participants participating in this case, including to **Plaintiff Erik A. Ahlgren, Trustee**, and this constitutes service or notice pursuant to Local Rule 9006-1(a).

Dated: May 18, 2018 \_\_\_\_\_ /e/ Lorie A. Klein \_\_\_\_\_